

**BOARD OF ADJUSTMENT MINUTES – FEBRUARY 19, 2004**

Present:     Len Harten, Chairman  
               Rick Westergren, Vice-Chairman  
               Katherine Bauer  
               Kathleen Maher  
               Heather Nelson  
  
               Kevin Lynch, Bldg. Insp.  
               Shirley Carl, Recording Secretary

Excused:     Bob Levenson

Case # 1-04   Janice Adams – 251 Mason Rd. – Map 41, Lot 44 – Special Exception  
Article V, Para. 5.042.G to construct a one-stall garage attachment on the east end of  
the existing garage to be constructed 18'+- from the front property line.

Motion to approve \_\_\_\_\_

Seconded by     \_\_\_\_\_

Signed             \_\_\_\_\_

Chairman Harten opened the hearing at 7:30 p.m. by stated that the hearings are held in accordance with the TOM of Zoning Ordinances and the NH State Statutes.

The notice of hearing and abutter list was read into the record. Present – Janice Adams and Donald Boudreau, occupant; no abutters.

J. Adams stated that they would like to add a one-stall garage to the east end of an existing garage. Mr. Boudreau stated that he is handicapped and has difficulty getting the snow off the cars in the wintertime. It was further explained that the existing garage is not large enough.

The present house is closer to the road by 8' than the garage will be. K. Lynch confirmed the previous statement. The house to their knowledge is approximately 150 years old or more. Mr. Bouchard explained that they planned to put the garage in line with the house. The encroachment is being increased.

The criteria for the special exception were then addressed:

- A. The proposed use shall be similar to those permitted in the district. It is a strictly residential area and other houses have garages.
- B. The specific site is an appropriate location for the proposed use. Yes, as it is part of the residence.
- C. The use as developed will not adversely affect the adjacent area. The addition wouldn't affect the side lots. At this time, L. Harten stated that there are other residences in the area that were constructed close to the road.
- D. There will be no nuisance or serious hazard to vehicles or pedestrians. No vehicles are being added.
- E. Adequate appropriate facilities will be provided for the proper operation of the proposed use. It is already paved and ready for the addition.

No further comments/questions, the public portion of the hearing was closed at 7:42 PM

Vote as follows:

1. Is the exception allowed by the ordinance?

K. Bauer – Yes      K. Maher – Yes      H. Nelson – Yes      R. Westergren – Yes  
L. Harten – Yes

2. Are the specified conditions present under which the exception may be granted?

K. Bauer – Yes      K. Maher – Yes      H. Nelson – Yes      R. Westergren – Yes  
L. Harten – Yes

A motion was made by K. Maher, seconded by R. Westergren and unanimously voted.

30-day appeal period – March 22, 2004

**BOARD OF ADJUSTMENT MINUTES – FEBRUARY 19, 2004**

Present:      Len Harten, Chairman  
                 Rick Westergren, Vice-Chairman  
                 Katherine Bauer  
                 Kathleen Maher  
                 Bob Levenson

                 Kevin Lynch, Bldg. Insp.  
                 Shirley Carl, Recording Secretary

Case # 2-04   Pismai Parkkaew, 381 Nashua St. – Map 30, Lot 40 – Variance from  
Article V, Para. 5.034.A to convert a two (2) unit building into a four unit building.

Motion to approve \_\_\_\_\_

Seconded by      \_\_\_\_\_

Signed                      \_\_\_\_\_

Chairman Harten opened the hearing at 7:46 pm by stating that the hearings are held in accordance with the TOM Zoning Ordinances and the NH Statutes.

The notice of hearing and abutters list was read into the record: Present – Pismai Parkkeaw owner and builder, Richard Couture; abutter – Judy Bower

P. Parkkeaw purchased the two-family residence in August of 2001.

R. Couture gave an overview of the location of the parcel and the residence.

Proposal is to convert the present residence from a two-family to a four-family residence. This would be accomplished by adding a staircase to the south side of the residence, which is at the rear with a second story porch with means of egress to both upstairs apartments.

Presently the configuration of the building is two apartments side by side, up and down. The owner has had difficulty in renting ½ of the house. The house is large and expensive to heat and people tend to shy away from it. As a result it is economically unfeasible for her to maintain. With smaller units, she can run a legitimate business. There is ample parking for 12 cars total; two will be in the existing garage. The parking area is set up so it is convenient to enter, loop around and exit onto Powers St. Both the entrance/exit could be set up at the same location.

House was constructed in 1900 and therefore doesn't meet today's standards for set backs. Proposed construction wouldn't violate any of setback distances, everything is in the building envelope that exist at this time. Footprint isn't being changed.

The new units will consist of one bedroom (718 SF) and would be conducive to single people and wouldn't cause any congestion on Powers St. L. Harten questioned if the entrance to the upstairs apartments would be through the main house? R. Couture explained that the downstairs and upstairs would have common hallways. A person can enter any of the apartments through the front doors or enter from the rear. There are two existing porches at the rear of the building.

Presently, the owner occupies one side of the building and the other is rented out. Mention was made that there are presently two "for rent" signs in the window, explanation being that Mr. Couture has property that has units for rent and thus the sign. (this merely being a point of contact for him).

K. Bauer requested that we get to the reason for the request for a variance, which is the question of density. Mr. Couture explained that the land area is 15,006 SF, which is short of the five-unit per acre requirement. B. Levenson interjected that 1.72 units are presently allowed on this property. K. Bauer asked if the property could support two units. K. Lynch explained that the lot is 15,006 SF and he averaged the distances and it will come out relatively close. Under the present zoning "B" allows multi-family with five unit/acre. They are presently short of square footage with it being a two-family residence, which is grand fathered. What is there is there now is previous to zoning and has been there prior to 1969 (adoption of zoning) with no changes being made. He

meets the requirements inside the building of size of unit (550 SF for a one bedroom unit). Parking space requirement is two spaces per unit and will be met.

B. Levenson brought up the issue of the variance not being correct. The property is located in the L/C district and yet the request was mentioned as being from 5.034.A, which is from the Res. "B" district and he felt it should have been from 5.071.H. It was a choice that K. Lynch made rather than going from the L/C district and then referencing the requirements in Res. "B" district. Some board members felt it was a little misleading. It was determined that there is no encouragement here for increased density in the L/C district for residential housing.

The existing garage would remain and be counted as part of the 12 proposed parking spaces. Also, there would be two parking spaces in front of the garage and there is room for one car at the exit way and seven at the rear for a total of 12. B. Levenson questioned if there is even room for the required eight spaces. K. Lynch stated that the site plan was to show that there was sufficient amount of room for the required parking, the PB might change the set up of it, possibly change the entrance/exit, etc. This would be an issue for the Planning Board, the only reason the owner is before the Board is for density.

The criteria were then presented by Mr. Couture (see attachment "A", which addresses them in the written word).

K. Bauer commented that the ZBA is a land use board and we can't take into consideration financial hardship. It is obviously an issue for the owner but not an issue that we are to take into consideration. R. Couture that it was mentioned but it isn't a problem for them. K. Bauer thanked them for a clear presentation, but it was mentioned and she, as a board member cannot have it enter into her decision.

Judy Cole Bower, abutter, voiced her concern related to the parking issue and it needs to be taken up by the Planning Board. She is able to understand the issue of hardship in renting the structure. She brought up a personal issue, in that, she owned the property on the other side, which was also a large residence, and her difficulty in renting it due to the fact that it was a large, older building and the only people interested in it were families with a large number of children, which would be more of an impact if it was someone coming into Town of Milford versus four apartments with a single bedroom would have less of an impact on the schools. Her largest concern was parking and she doesn't want the tenants parking in her parking lot. Chairman Harten suggested that she attend the PB Meeting and voice her concerns.

No further questions for the applicant, the meeting went into closed session at 8:19 PM.

Criteria were then discussed by the Board members:

**1. Diminishment of value of abutting property.**

**K. Bauer** – She felt that it would/could diminish the value of abutting property because with each of the four units being occupied and it won't necessarily be one person per unit is pretty dense. With guests coming/going it will create a parking lot that could possibly be overflowing. **B. Levenson** doesn't see any affect one way or the other.

**K. Maher** - no problems. **R. Westergren** – **no problems** (he questioned if there was any rule as to the number of people in rentals)? Kevin responded there isn't any.

**L. Harten** doesn't have any problems as it is located, abuts an industrial area, there are multi-family apartments at the end of Powers St.; on the other side of Powers St. there is a doctor's office and he doesn't feel that one-bedroom apartments are conducive to the children issue as it could be two adults, rather than one person with children.

## **2. Would granting the variance be of benefit to the public interest?**

**B. Levenson** – Based on the absence of facts/figures of occupancy rates, etc., nothing has convinced him that it would be a benefit to the public interest. Adding two more rental units in TOM would be of benefit. **R. Westergren** - he doesn't see any detriment **K. Maher** (referencing the ZBA Handbook – Page 15, top of page) **"As you can see, there is no adverse effect on the public interest, that should be enough, unless abutters or board members themselves identify some specific adverse effect on the public interest, in which case the applicant will have the burden of overcoming it"**. She doesn't see any specific adverse effect on the public interest. **L. Harten** is in agreement, he doesn't see any adverse effect on the public interest.

## **3. Hardship - (a) Interference with the reasonable use of their property based on the unique setting of the property in its environment. K. Bauer**

doesn't consider it to be a unique setting; they do have reasonable use of the property knowing that each existing unit is large and know there is a shortage of rental units for families and there are families in/or near Milford that would be looking for such a unit as exists. Again, she feels the owner has reasonable use of the property. **B. Levenson** - the property was purchased in 2001 and market value changes haven't been dramatic, one unit is lived in by the owner, the other is being rented and to him that is reasonable use. He doesn't see where there is any hardship. **K. Maher** stated that for years she has passed by this house but her assumption was that it was always a four-unit building. The building is huge and she knows that there is a definite need for housing but she doesn't think many families could afford a house that large. It would prohibitive to maintain (heat) a house that large. She feels the property is unique, it is a large house. **R. Westergren** didn't feel that a four-unit house in that building would be unreasonable. K. Bauer commented that it says "do they have reasonable use" and feels K. Maher has an argument, she doesn't agree with it but feels it is a valid point. The question is one of reasonable use or not. **L. Harten** is in agreement with K. Maher and R. Westergren but commented that she does have a reasonable use of the property and he always thought there were more than two units in the building. The setting on the property isn't unique but the building itself generates its own uniqueness possibly because of the era in which it was constructed. He doesn't have a problem.

## **3.b. No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property. K. Bauer**

feels that there is a fair and substantial relationship, etc. **B. Levenson** is in agreement, there is a reason why it says five units/acre. He would presume there are health, convenience, and comfort issues. He doesn't think that just because it is a large building it should be converted into four units. **R. Westergren** felt it was unfair because of the density. **K. Maher** then refers to the ZBA Handbook, Page 16, Section 2

"Is the full application of the ordinance to this particular property necessary to promote a valid public purpose". She stated that there are already two apartments in the building, which makes them in violation at this time. Going back to the quote from the handbook, it doesn't promote any valid public purpose at all. She feels it is unreasonable for her to have it as a two-family residence, it is just too big. **L. Harten** stated that if we were dealing with new construction he would have a problem with the density. **B. Levenson** asked for an explanation regarding Len's comment. **L. Harten** referring back to no fair and substantial relationship exists between the general purpose of the Zoning Ordinance – the ordinance says five units/acre. If they were trying to put up a new building on this lot, he would definitely have a problem with the density. **K. Bauer** and **B. Levenson** have an issue with the density factor. **K. Bauer** refers to the general purpose of the ordinance is to keep density related to the land area. The specific restriction on this property is that it is a very small lot so it doesn't support the area requirement, only supports two units, which are grandfathered in. She feels there is a fair relationship between the general purpose of the ordinance and the specific restriction on their property, which is a very small area to support four apartments.

**3.c. – The variance would not injure the public or private rights of others.** **K. Maher** felt that it doesn't injure the public or private rights of others. **K. Bauer** states the same. **B. Levenson** stated that if our argument is that the building is too big for two units then there is an argument set for someone else to ask for the same thing (precedent). **K. Maher** disagreed with the fact of whether we set a precedent or not, she doesn't feel we do. We are also considering the building and its location – it abuts industrial land, huge apartment complex – we are not setting a precedent. **K. Bauer** felt that **K. Maher's** impression, to someone who doesn't know the area, that it is in the middle of the industrial district apartment complexes which are up Powers St. but across the street from them and coming down Nashua St. from Milford you don't exactly have an industrial, multi-family look to the neighborhood. She is aware that there is a medical facility, more than SFR but it has a very residential look. It is also near the Powers St. multi-family, industrial section but it is closer to a residential section. **L. Harten** stated that the appearance of the building won't change and he doesn't feel that the building will look non-residential.

**4. Would granting the variance do substantial justice?** **R. Westergren** felt it would do substantial justice. **K. Bauer** doesn't feel it would do substantial justice. **K. Maher** felt it would do substantial justice. **B. Levenson** referred to the Handbook where it states that any loss to the individual that is not outweighed to the general public is an injustice. (Pages 16 and 17). There is use of this property, someone is living there, there is a rental unit and he doesn't know if our purpose is to get more. There is nothing in the material to indicate that these apartments will be affordable housing, nothing is substantiated that we need additional units in TOM. **L. Harten feels that by granting the variance, substantial justice will be done.**

**5. Could the variance be granted without violating the spirit of the ordinance?** **K. Maher – Yes; R. Westergren – Yes; B. Levenson** feels that we have an ordinance that stipulates density and this will violate the ordinance without any good reason. **L. Harten** stated that the ordinance establishes the Board of Adjustment to deal with issues like this. **K. Bauer** agrees but also states that it has to meet the

conditions. She requested from Len his reasoning. **K. Maher** stated that the reason we have a Board of Adjustment is to adjust, if we think the ordinance is unfair we make the adjustment and she feels it is unfair. There is no possibility that they could put five units/acre in this area. It is very unique. **K. Bauer** replied that we have to deal with the ordinance as written and we can't say, we are going to give these people something because we think the ordinance is unfair. She feels we would be way out of line, if we do. **K. Maher**, again referring to Page 17 of the handbook "In general, the provisions must promote the health, safety or general welfare of the community". We are not hurting the health, safety or general welfare of the community. It goes on to talk about fires, panic, providing adequate light and air and that will be provided. **L. Harten** stated that the spirit of the ordinance is to not allow overcrowding and density is one of the requirements, but considering the size of this building, he doesn't think we are looking at an overcrowding situation. He doesn't believe that we would be violating the spirit of the ordinance by granting this request. **K. Lynch** questioned where the "five units per acre" was derived. This brought forth more comments. **K. Bauer** felt that be allowing four apartments on 1/3<sup>rd</sup> acre is going against the spirit of the ordinance.

Voting:

1. Could the variance be granted without diminishing the value of abutting property?

K. Bauer – No            K. Maher – Yes            R. Westergren – Yes  
B. Levenson – Yes      L. Harten – Yes

2. Would granting the variance be of benefit to the public interest?

K. Bauer – No            K. Maher – Yes            R. Westergren – Yes  
B. Levenson – No        L. Harten – Yes

3. Would denial of the variance result in unnecessary hardship?

K. Bauer – No            K. Maher – Yes            R. Westergren – Yes  
B. Levenson – Yes       L. Harten – Yes

4. Would granting the variance do substantial justice?

K. Bauer – No            K. Maher – Yes            R. Westergren – Yes  
B. Levenson – Yes       L. Harten – Yes

5. Could the variance be granted without violating the spirit of the ordinance?

K. Bauer – No            K. Maher – Yes            R. Westergren – Yes  
B. Levenson – Yes       L. Harten – Yes

**A motion was made by K. Maher, seconded by R. Westergren and voted by majority to grant the request.**

**30-day appeal period - March 22, 2004.**